IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

DERRICK KYLE OLIPHANT, #127054 §

VS.

§ CIVIL ACTION NO. 4:12cv248
CRIMINAL ACTION NO. 4:07CR58(10)

UNITED STATES OF AMERICA §

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Movant Derrick Kyle Oliphant, an inmate confined in FCC Beaumont Low in Beaumont, Texas, filed the above-styled and numbered motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

This Court issued an order on June 4, 2012, instructing Movant to complete the standardized § 2255 form and return to the Court within thirty days. As of today, Movant has not provided the Court with the completed standardized form. He has failed to prosecute this case.

The exercise of the power to dismiss for failure to prosecute is committed to the sound discretion of the Court and appellate review is confined solely in whether the Court's discretion was abused. *Green v. Forney Eng'g Co.*, 589 F.2d 243, 247 (5th Cir. 1979); *Lopez v. Aransas County Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978). Not only may a district court dismiss for want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion County*

Gen. Hosp., 617 F.2d 1164, 1167 (5th Cir. 1980). The present case should be dismissed.

Recommendation

It is therefore recommended that the motion be dismissed without prejudice. Fed. R. Civ.

Proc. 41(b); Rule 41, Local Rules for the Eastern District of Texas.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve

and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations

contained in this Report within fourteen days after being served with a copy shall bar that party from

de novo review by the district judge of those findings, conclusions and recommendations and, except

on grounds of plain error, from appellate review of unobjected-to factual findings and legal

conclusions accepted and adopted by the district court. Douglass v. United Servs. Auto Ass'n, 79

F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 16th day of July, 2012.

DON D. BUSH

UNITED STATES MAGISTRATE JUDGE

2